



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No.

FITZPATRICK CELLA HARPER &
SCINTO
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112

COPY MAILED

SEP 30 2005

OFFICE OF PETITIONS

In re Patent No. 6,885,387	:	
Khanapure et al.	:	DECISION ON REQUEST FOR
Issue Date: April 26, 2005	:	RECONSIDERATION OF
Application No. 09/671,161	:	PATENT TERM ADJUSTMENT
Filed: September 28, 2000	:	and
Attorney Docket No. 35.C14841	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION
	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)," filed June 7, 2005. Patentees assert entitlement to a patent term adjustment of six hundred thirty-two (632) days.

The request for reconsideration of the patent term adjustment indicated in the patent is GRANTED to the extent indicated herein.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of six hundred thirty-two (632) days.

On April 26, 2005, the above-identified application matured into U.S. Patent No. 6,885,387. The instant request for reconsideration filed June 7, 2005 was timely filed within 2 months of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment of 512 days.

The initial determination of patent term adjustment of 591 days was increased by 41 days for Office delay in issuing the patent, but reduced by 120 days for patentees' submission of an amendment under § 1.312 after the mailing of the notice of allowance. Patentees contend that the amendment should not be considered a failure to engage because it was a necessary and direct response to an error in the title of the invention as set forth on the Notice of Allowance and Issue Fee Due.

37 CFR § 1.704(c)(10) provides that the submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed is a circumstance which constitutes a failure to engage in reasonable efforts to conclude processing or examination. It is undisputed that the other paper, an amendment under § 1.312 to correct the title, was submitted after the mailing of the notice of allowance. A review of the record supports a conclusion that the title was amended by way of amendment filed prior to the mailing of the notice of allowance. The notice of allowance was responsive to the amendment, but did not include the change of title. Under the circumstances of this case, the filing of the amendment to correct title after the mailing of the notice of allowance is not considered a "failure to engage in reasonable efforts" within the meaning of § 1.704(c)(10). No reduction for the filing is warranted.

In view thereof, the patent term adjustment indicated in the patent should be six hundred thirty-two (632) days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by SIX HUNDRED THIRTY-TWO (632) days.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

Kery A Fries

Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction